

FACTUAL HISTORY

On July 27, 2018 appellant, then a 49-year-old city letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on July 26, 2018 he experienced lower back pain and spasms when he delivered a heavy box while in the performance of duty.² He stopped work on July 27, 2018.

Appellant submitted work excuse notes dated July 28 and July 30, 2018 from an unknown provider with an illegible signature.

In an August 8, 2018 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence necessary to establish his claim. By separate development letter of even date, OWCP requested additional information from the employing establishment. It afforded appellant 30 days to respond.

In a report of injury form dated July 30, 2018, Dr. Christopher P. De Carlo, a physiatrist, noted lumbar examination findings of mild-to-moderate tenderness to palpation along the lower paraspinal musculature and mild spasms. He diagnosed acute lumbar spine injury with resultant mild disc bulge at L4-5 and mild-to-moderate bilateral neural foraminal stenosis at L4-5 level. Dr. De Carlo described that on July 26, 2018 appellant twisted to the side to deliver a moderately-sized parcel and opined that “this is the cause of his acute back injury.” He explained how sudden and unexpected movements while carrying weight can shift a disc out of place, especially at the lower levels of the spine.

Appellant also submitted narrative statements in which he described the July 26, 2018 incident in further detail, an authorization for examination and/or treatment (Form CA-16) signed on July 30, 2018, and additional progress reports and work status notes from Dr. De Carlo dated August 7 through 22, 2018. An attending physician’s report, Part B of a Form CA-16 dated August 16, 2018 from Dr. De Carlo noted a diagnosis of lumbar discopathy. He also checked a box marked “Yes” indicating that the condition was caused or aggravated by employment activity.

In a narrative report dated August 22, 2018, Dr. De Carlo described the July 26, 2018 employment incident and appellant’s worsening back symptoms. He provided examination findings, reviewed appellant’s diagnostic records, and diagnosed acute lumbar spine injury with resultant mild disc bulge at L4-5 and bilateral neural foraminal stenosis at L4-5 level. Dr. De Carlo explained that when appellant lifted the heavier parcel and twisted, it “increased the biomechanical impact loading[,] which was transferred to the intervertebral disc space at the level of L4-5...[, which] caused a weakening of the intervertebral disc annulus fibrosus and with the weakening of the annulus fibrosus, the disc started to extend slightly beyond its normal physiologic position.”

By decision dated September 14, 2018, OWCP accepted that the July 26, 2018 employment incident occurred as alleged, but denied the claim, finding that the medical evidence of record was insufficient to establish causal relationship between appellant’s diagnosed condition

² The record reflects that appellant subsequently filed an occupational disease claim (Form CA-2) on September 19, 2019 under OWCP File No. xxxxxx987 alleging lower and middle back pain due to factors of his federal employment. That claim has not been administratively combined with the current claim.

and the accepted July 26, 2018 employment incident. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

Appellant subsequently submitted diagnostic reports, including a July 28, 2018 lumbar spine magnetic resonance imaging (MRI) scan and an August 8, 2018 lumbar spine computerized tomography (CT) scan. He also provided additional statements, which provided a detailed discussion of the July 26, 2018 employment incident, the subsequent medical treatment that he received, and addressed an overpayment under OWCP File No. xxxxxx608.³

In a progress note dated September 24, 2018, Dr. De Carlo provided examination findings and diagnosed acute lumbar spine injury with resultant mild disc bulge at L4-5 and bilateral neural foraminal stenosis at L4-5 level.

On October 1, 2018 appellant requested reconsideration.

In a report dated October 2, 2018, Dr. De Carlo asserted that in his August 28, 2018 narrative report he provided medical rationale explaining how the lifting and twisting motion when appellant lifted a parcel from his vehicle caused the lumbar injury.

By decision dated December 14, 2018, OWCP denied modification of its September 14, 2018 decision.

On December 27, 2018 appellant requested reconsideration and submitted statements dated December 15 and 25, 2018. He alleged that OWCP did not thoroughly review his reconsideration request and discussed various points of disagreement with the December 14, 2018 decision. Appellant also submitted modified job offers dated June 15 and July 26, 2018 and a union grievance time and documentation request form dated December 19, 2018.

By decision dated March 27, 2019, OWCP denied appellant's request for reconsideration of the merits of the claim pursuant to 5 U.S.C. § 8128(a).

On May 14, 2019 appellant requested reconsideration of the December 14, 2018 OWCP decision.

In a report dated April 24, 2019, Dr. De Carlo indicated that he was correcting the history of injury dictated in his August 22, 2018 report to reflect that "on 7/26/18, while retrieving a large parcel from the back of his vehicle, he twisted to the left and felt a twinge of pain."

By decision dated June 27, 2019, OWCP denied modification of its December 14, 2018 decision.

Appellant subsequently submitted statements dated August 12 and 19, 2019. He indicated that he worked the whole eight-hour shift on July 26, 2018, which included driving, carrying/delivering mail, and delivering other various size and weight parcels. Appellant also

³ The record reflects that appellant has a previously accepted December 2, 2014 occupational disease claim for bilateral plantar fasciitis under OWCP File No. xxxxxx608. That claim has not been administratively combined with the current claim.

alleged that management was obstructing his attempts to gather evidence about his claim. He submitted union grievance time and documentation request forms dated August 8 and 10, 2019.

On November 15, 2019 appellant requested reconsideration.

Appellant submitted a lumbar MRI scan dated October 10, 2019, which revealed posterior disc bulges and protrusions at L3-4, L4-5, and L5-S1.

By decision dated January 28, 2020, OWCP denied appellant's request for reconsideration of the merits of the claim pursuant to 5 U.S.C. § 8128(a).

On November 14, 2022 appellant requested reconsideration of the June 27, 2019 OWCP decision. He asserted that OWCP should combine the current claim and OWCP File No. xxxxxx987 because they were related to the same medical condition and had overlapping mechanisms of injury.

By decision dated November 23, 2022, OWCP denied appellant's reconsideration request, finding that it was untimely filed and failed to demonstrate clear evidence of error.

LEGAL PRECEDENT

Pursuant to section 8128(a) of FECA, OWCP has the discretion to reopen a case for further merit review.⁴ To be entitled to a merit review of an OWCP decision, a request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.⁵ Timeliness is determined by the document receipt date of the request for reconsideration as is indicated by the "received date" in the Integrated Federal Employees' Compensation System (iFECS).⁶ The Board has found that the imposition of this one-year filing limitation does not constitute an abuse of discretion.⁷

OWCP may not deny a request for reconsideration solely because it was untimely filed. When a request for reconsideration is untimely filed, it must nevertheless undertake a limited review to determine whether the request demonstrates clear evidence that OWCP's most recent merit decision was in error.⁸ OWCP's procedures provide that it will reopen a claimant's case for merit review, notwithstanding the one-year filing limitation set forth in 20 C.F.R. § 10.607, if the

⁴ 5 U.S.C. § 8128(a); *L.W.*, Docket No. 18-1475 (issued February 7, 2019); *Y.S.*, Docket No. 08-0440 (issued March 16, 2009).

⁵ 20 C.F.R. § 10.607(a).

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4(b) (September 2020).

⁷ *G.G.*, Docket No. 18-1074 (issued January 7, 2019); *E.R.*, Docket No. 09-0599 (issued June 3, 2009); *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

⁸ See 20 C.F.R. § 10.607(b); *R.S.*, Docket No. 19-0180 (issued December 5, 2019); *Charles J. Prudencio*, 41 ECAB 499, 501-02 (1990).

claimant's request demonstrates clear evidence of error on the part of OWCP.⁹ In this regard, OWCP will limit its focus to a review of how the newly submitted evidence bears on the prior evidence of record.¹⁰

To demonstrate clear evidence of error, a claimant must submit evidence relevant to the issue decided by OWCP. The evidence must be positive, precise, and explicit, and it must manifest on its face that OWCP committed an error.¹¹ It is not enough merely to show that the evidence could be construed so as to produce a contrary conclusion.¹² This entails a limited review by OWCP of how the evidence submitted with the reconsideration request bears on the evidence previously of record, and whether the new evidence demonstrates clear evidence of error on the part of OWCP.¹³ To demonstrate clear evidence of error, the evidence must not only be of sufficient probative value to create a conflict in medical opinion or establish a clear procedural error, but must be of sufficient probative value to shift the weight of the evidence in favor of the claimant and raise a substantial question as to the correctness of OWCP's decision.¹⁴ The Board makes an independent determination of whether a claimant has demonstrated clear evidence of error on the part of OWCP such that it abused its discretion in denying merit review in the face of such evidence.¹⁵

ANALYSIS

The Board finds that OWCP properly denied appellant's request for reconsideration, finding that it was untimely filed and failed to demonstrate clear evidence of error.

As noted above, a request for reconsideration must be received within one year of the date of the last merit decision for which review is sought.¹⁶ As appellant's request for reconsideration was not received by OWCP until November 14, 2022, more than one year after the June 27, 2019 decision, it was untimely filed. Consequently, he must demonstrate clear evidence of error by OWCP in its June 27, 2019 decision.¹⁷

⁹ *L.C.*, Docket No. 18-1407 (issued February 14, 2019); *M.L.*, Docket No. 09-0956 (issued April 15, 2010); *see also id.* at § 10.607; *supra* note 6 at Chapter 2.1602.5(a) (September 2020).

¹⁰ *J.M.*, Docket No. 19-1842 (issued April 23, 2020); *J.W.*, Docket No. 18-0703 (issued November 14, 2018); *Robert G. Burns*, 57 ECAB 657 (2006).

¹¹ 20 C.F.R. § 10.607(b); *B.W.*, Docket No. 19-0626 (issued March 4, 2020); *Fidel E. Perez*, 48 ECAB 663, 665 (1997).

¹² *See G.B.*, Docket No. 19-1762 (issued March 10, 2020); *Leona N. Travis*, 43 ECAB 227, 240 (1991).

¹³ *Id.*

¹⁴ *C.M.*, Docket No. 19-1211 (issued August 5, 2020); *Robert G. Burns*, 57 ECAB 657 (2006).

¹⁵ *U.C.*, Docket No. 19-1753 (issued June 10, 2020); *Cresenciano Martinez*, 51 ECAB 322 (2000); *Thankamma Matthews*, 44 ECAB 765, 770 (1993).

¹⁶ *Supra* note 5.

¹⁷ *G.L.*, Docket No. 18-0852 (issued January 14, 2020); 20 C.F.R. § 10.607(b); *Charles J. Prudencio*, *supra* note 8.

The Board further finds that appellant has not demonstrated clear evidence of error on the part of OWCP in issuing its June 27, 2019 decision.

In his untimely reconsideration request, appellant asserted that OWCP should combine the current claim with his prior claims. He, however, did not address the medical question of causal relationship at issue in his case. Accordingly, appellant's arguments fail to raise a question concerning the correctness of OWCP's decision.¹⁸ His argument, therefore, is insufficient to demonstrate clear evidence of error.¹⁹

Therefore, the Board finds that the evidence submitted following merit review does not demonstrate that OWCP erred when it denied appellant's traumatic injury claim.²⁰ Appellant failed to submit the type of positive, precise, and explicit evidence which manifests on its face that OWCP committed an error in its June 27, 2019 decision.²¹ Therefore, OWCP properly determined that he failed to demonstrate clear evidence of error in its June 27, 2019 decision.

CONCLUSION

The Board finds that OWCP properly denied appellant's request for reconsideration, finding that it was untimely filed, and failed to demonstrate clear evidence of error.

¹⁸ *Supra* note 14.

¹⁹ *See M.M.*, Docket No. 21-1203 (issued December 22, 2022).

²⁰ *See L.B.*, Docket No. 22-1096 (issued January 13, 2023); *see also S.T.*, Docket No. 18-0925 (issued June 11, 2019).

²¹ *See R.K.*, Docket No. 19-1474 (issued March 3, 2020); *S.W.*, Docket No. 18-0126 (issued May 14, 2019).

ORDER

IT IS HEREBY ORDERED THAT the November 23, 2022 nonmerit decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 1, 2023
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board